

# The Gazette of India

## EXTRAORDINARY

### PART II—Section 3

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#### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 19th March 1953*

**S.R.O. 548.**—Whereas the elections of Shri Kirai Mushar and Shri Anup Lal Mehta, as members of the House of the People from the Bhagalpur-cum-Purnea Constituency of that House, have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mahabir Das s/o Late Darbari Das, Laloochak, Thana Mojahidpur, Town Bhagalpur, P.O. Mirjanhat, District Bhagalpur (Bihar);

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order to the Election Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 142 of 1952

*and*

ELECTION CASE No. 4 of 1952

Relating to the Election held in the month of January, 1952, to the House of the People in the Bhagalpur-cum-Purnea constituency.

Sri Mahabir Das son of Late Darbari Das, by caste Pasi, by profession cultivation, resident of Laloochak, Thana Mojahidpur, town Bhagalpur, P.O. Mirjanhat and District Bhagalpur, State of Bihar—*Petitioner.*

*versus*

1. Sri Anup Lal Mehta s/o Sri Gorelal Mehta, by caste Koiri, by profession cultivation and business, Village and P.O. Banmankhi, thana Dharara, District Purnea, State of Bihar.

2. Sri Kirai Mushar s/o Khushar Mushar, by caste Mushar, by profession labourer, village Murho, P.O. Murho, Thana Madhipura, District Bhagalpur, State of Bihar.

3. Sri Murlidhar Singh s/o Ram Sahay Singh, by caste Rajpoot, by profession cultivation etc., Mohalla Madhubani, P.O. Purnea, thana Khazanchi Hat, District Purnea, State of Bihar—*Respondents*.

*For Petitioner:—*

Mr. S. N. Sahay, Counsel.

Sri Udai Narain, Advocate,

Sri Hirdal Narain & Sri Satyanarain Prasad, pleaders.

*For Respondent No. 1:—*

Sri Parmeshwar Deyal,

Sri Baldeo Narain and,

Sri Jagdish Prasad Sinha, pleaders.

*For Respondent No. 2:—*

Sri Niroj Chandra Ganguly, Advocate,

Sri Parmeshwar Prasad Verma, pleader.

**PRESENT:—**

Sri Kamla Sahai, Barrister-at-Law, *Chairman*.

Sri Umakanta Prasad Sinha, Retired District & Sessions Judge.

Sri Rajeshwari Prasad, Advocate—*Members, Election Tribunal*.

### JUDGMENT

This election petition filed by Sri Mahabir Das relates to Bhagalpur-cum-Purnea plural constituency of the House of the People. Out of the two seats allotted to this constituency, one is reserved for a member of the scheduled castes or the scheduled tribes. At the last General Election, there were four candidates. Sri Anup Lal Mehta, respondent no. 1, and the petitioner were Congress candidates. Sri Kirai Mushar, respondent no. 2, and Sri Murlidhar Singh, respondent no. 3, were the Socialist candidates. The petitioner is a Pasl by caste and respondent no. 2 is a Mushar by caste. Under the Constitution (Scheduled Caste) Order, 1950, published in the *Gazette of India, Extraordinary*, Part II-Section 3, dated 11-8-50, Pasl and Mushar are both scheduled castes throughout the State of Bihar. Thus the petitioner and respondent no. 2 were the candidates who were members of scheduled castes.

The aforesaid four candidates secured the following numbers of votes:—

<i>Name</i>	<i>Votes</i>
1. Sri Anup Lal Mehta (Respondent no. 1)	... 1,59,358
2. Sri Kirai Mushar (Respondent No. 2)	... 1,29,144
3. Sri Mahabir Das (Petitioner)	... 1,24,589
4. Sri Murlidhar Singh (Respondent No. 3)	... 99,674

As Sri Anup Lal Mehta secured the largest number of votes and as Sri Kirai Mushar secured the largest number of votes among the scheduled caste candidates, these two candidates were declared to be elected.

The petitioner's case is that the result of the election has been materially affected due to improper acceptance of the nomination paper of Sri Kirai Mushar, to the commission of serious irregularities and illegalities in the conduct of the polling, to ballot boxes of several polling stations having been tampered with and to various irregularities and illegalities being committed at the time of counting of the votes. His case also is that the return of election expenses filed by Sri Kirai Mushar is false in material particulars. It is unnecessary to give details regarding these allegations at this stage because we will have to mention them while considering the different issues framed in the case. On the basis of these allegations, the petitioner has prayed that the election of respondent No. 2 be declared to be void and the petitioner be declared to have been duly elected or, in the alternative, the election be declared to be wholly void.

Shri Kirai Mushar has filed a written-statement in which he has denied the allegations made by the petitioner and has stated that the election petition is fit to be rejected. Sri Anup Lal Mehta has filed a separate written-statement. His

case also is that the allegations made by the petitioner are false and that the election petition is liable to be rejected. These two are the only respondents who appeared and contested the case at the time of hearing.

Sri Murlidhar Singh has neither filed any written-statement nor has he appeared to contest the case.

The following issues have been framed:—

#### Issues

1. Is the petition maintainable?
2. Is the petition barred by limitation?
3. Does the petition disclose any cause of action?
4. Was the nomination paper of respondent no. 2 improperly accepted by the Returning Officer? Was the declaration made and signed by respondent no. 2 not in accordance with law? Was the result of the election materially affected thereby?
5. Was any material irregularity or illegality committed in conducting the polls as alleged by the petitioner?
6. Were the ballot boxes as mentioned in paras 7 and 8 of the petition tampered with? If so, did it materially affect the election?
7. Did not the Electoral Roll or lists of voters supplied to the Presiding Officers of Tribeniganj Thana No. 2 contain the names of the voters of all the villages of the Thana? If not, were the voters of some of the villages in Tribeniganj Thana No. 2 deprived of their right of franchise? Has this materially affected the election?
8. Was ballot box no. 161 of the petitioner found missing and did it materially affect the result of the election?
9. Was the counting made in violation of law and did it affect the result of the election?
10. Were forms nos. 10, 14, 15 and 16 drawn up according to law and did they show proper and clear accounts of the ballot papers?
11. Did the petitioner actually poll the highest number of votes as claimed? If so, is he entitled to be declared to have been duly elected?
12. What relief or reliefs is the petitioner entitled to? Can he be granted any relief which will adversely affect respondent no. 1?

#### Findings

*Issues nos. 1, 2 and 3.*—These issues have not been pressed. We, therefore, answer issue no. 2 in the negative and issues nos. 1 and 3 in the affirmative.

*Issue no. 4.*—(1) The petitioner's first allegation that has to be considered under this issue is that respondent no. 2 is Kiro Mushar and not Kirai Mushar who is recorded as a voter of village Murho in the Electoral Roll. This allegation is supported by the petitioner (P.W. 7) himself. He admits, however, that he has never been to village Murho and that he has not yet tried to find out who is Kirai Mushar of the Electoral Roll. On the other hand, respondent no. 2 is R.W. 7. He says that his name is Kirai Mushar but some people call him Kiro Mushar also. Ambica Prasad Singh (R.W. 3) and Sri Awadh Narain Jha (R.W. 4), who is a practising pleader, support him on this point. The name "Kirai Mushar" is recorded under serial no. 21 and House no. 80 in the Electoral Roll [Ext.E(2)]. Respondent no. 2 is a son of Khushar Mushar. In his objection (Ext. 19) filed on 1st December 1951 before the Returning Officer, the petitioner stated that respondent no. 2 was not the real Kirai Mushar son of Khushar Mushar. Thus, even according to the petitioner, the voter "Kirai Mushar" of the Electoral Roll is a son of Khushar Mushar. Use of abbreviation of names is quite common in this part of the world. We, therefore, hold that respondent no. 2 is Kirai Mushar alias Kiro Mushar and that he is recorded as a voter in the Electoral Roll.

(2) The second allegation which comes under this issue is that the nomination papers filed by respondent no. 2 do not bear his signature. This allegation is based only upon the fact that the signatures of respondent no. 2 on the nomination paper (Ext. 18) do not tally with the signatures of respondent no. 2 on Ext. 17 which is an application for four forms of nomination papers on his behalf. Anup Paswan (R.W. 6) has stated that he made the signatures on behalf of respondent no. 2 on Ext. 17 because respondent no. 2 had authorised him to make signatures on his behalf. Respondent no. 2 himself says that the signatures on the nomination papers are his and he also says that the signatures [Exts. 57 and 57(a)] on the return of election expenses were made by him. Sri Awadh Narain Jha (R.W. 4)

also says that respondent no. 2 made the signatures on Ext. 18 in his presence. We see no reason to disbelieve R.W. 4 and the signatures on Ext. 18 and the signatures on Exts. 57 and 57(a) appear to us to tally. We therefore, hold that the signatures on the nomination papers are genuine and that there is no substance in the allegation of the petitioner.

(3) Respondent no. 2 has merely mentioned "Bhagalpur-cum-Purnea—Part I" in column nos. 7, 8, 10 and 14 of his nomination paper (Ext. 18) as the name of the constituency from which he was standing for election and in the Electoral Roll of which he, his proposer and his seconder are recorded as voters. It is contended on behalf of the petitioner that section 2(2) of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) shows that the name of this constituency should have been described as Parliamentary constituency because Bhagalpur-cum-Purnea forms a part of that constituency. In our opinion, this contention is erroneous. The name of the constituency is Bhagalpur-cum-Purnea and it is a Parliamentary constituency as referred to in section 2(2) of the Act. The Returning Officer (R.W. 1) has said that there is no other constituency of this name. Besides, respondent no. 2 has mentioned in column no. 1 of his nomination paper (Ext. 18) that Bhagalpur-cum-Purnea is a constituency of Lok Sabha i.e., a Parliamentary constituency. Hence we do not find any omission of a material fact in column nos. 7, 8, 10 and 14.

(4) Under section 33(3) of the Act a candidate cannot be deemed to be qualified to be chosen for a seat reserved for scheduled castes unless his nomination paper is accompanied by a declaration which specifies the particular caste to which the candidate belongs and the area in which such caste is one of the scheduled castes. Respondent no. 2 has given such a declaration with his nomination paper (Ext. 18) but he has given his caste in that declaration along with his name and he has given the area in which that caste is a scheduled caste as Bhagalpur. It has been contended on behalf of the petitioner that respondent no. 2 should have given his caste (Mushar) in the column meant for caste and not with his name. We think that this objection is not tenable. All that he was required to do was to indicate the scheduled caste of which he was a member and he has certainly done that. Another contention is that respondent no. 2 should have given "Bihar" as the area and not Bhagalpur because Mushar is a scheduled caste in the whole of Bihar and that the only caste which is a scheduled caste in Bhagalpur district especially is Bhumij. We feel that this contention is also unsound. Bhagalpur is a district of Bihar State. Respondent no. 2 is a resident of Bhagalpur district. When Mushar is a scheduled caste in the whole of Bihar State, it follows that it is a scheduled caste in Bhagalpur district also. That being so, we hold that the declaration given by respondent no. 2 as required by section 33(3) of the Act is not at all defective.

(5) No other point has been raised against the nomination paper (Ext. 18) of respondent no. 2. It seems to us that there was no reason for the Returning Officer to reject this nomination paper. We hold that it has not been improperly accepted. We, therefore, answer Issue no. 4 in the negative.

*Issue No. 5.*—(1) The petitioner's first allegation which has to be considered under this issue is that the Presiding officers of at least forty-one polling stations of Murliganj and Singheshwar Asthan police-stations did not allow the petitioner's polling agents to attend and work at the polling stations. At the hearing, he has confined himself to two such polling stations i.e., those at Baijnathpur and Murliganj. The petitioner (P.W. 7) has stated that the Presiding officers of these two polling stations refused to allow his polling agents to remain in the booths on the ground that they had not received the list of polling agents from the Returning officer even though they presented the duplicate appointment letters. He further says that he had appointed Ramdeni Singh and Thakur Mandal as his polling agents at Baijnathpur and Murliganj polling stations respectively. The Returning Officer (R.W. 1) has admitted that the petitioner had filed copies of appointment letters of polling agents before him on 31st December 1951 but he did not send a list of the names of the polling agents to the Presiding officers because it was physically impossible for him to send such lists to polling stations which were located in six sub-divisions. Ext. 25 is the copy of a petition filed by the petitioner before the Presiding officer of Murliganj polling station. In this petition he has said that his polling agent was not allowed by the Presiding officer to remain in the polling station though duplicate copy was produced by him. It is significant however, that neither Ramdeni Singh nor Thakur Mandal has been examined on behalf of the petitioner. R.W. 2 was the Presiding officer of Baijnathpur polling station. He says that he does not remember whether anyone claiming to be the petitioner's polling agent made over any duplicate letter of appointment to him.

Ajodhya Prasad Mandal (R.W. 5) was a candidate for election to the Bihar Assembly from Murliganj constituency. He says that the Presiding officer of Murliganj polling station did not allow the polling agent of the petitioner to work as such because, when asked to produce the duplicate appointment letter, he did not produce it.

Under sub-rule (2) of rule 12 of the Representation of People Rules, 1951, the petitioner had to give notice of appointment of polling agents to the Returning officer at least three days before the commencement of the poll. This he appears to have done. Under sub-rule (3) of the same rule, the polling agent had to present a duplicate copy of the letter of appointment to the Presiding officer. In view of the fact that the alleged polling agents have not been examined and in view of the evidence of R. Ws. 2 and 5, we hold that Ramdani Singh and Thalur Mandal were not allowed to work as polling agents of the petitioner because they did not present the duplicate copies of their letters of appointment before the Presiding officers of Baijnathpur and Murliganj polling stations. Sub-rule (3) aforesaid lays down that no polling agent shall be allowed to perform any duty at the polling station unless he presents the duplicate copy of his appointment letter. In view of this provision, it is clear that the Presiding officers concerned did not act irregularly or illegally.

(2) The second allegation that comes under this issue is that posters of respondent nos. 2 and 3 were pasted and exhibited within hundred yards of the polling station at Baijnathpur. The petitioner is the only witness who supports this allegation. He says that there was a hut within the polling enclosure at Baijnathpur polling station, that he found posters and notices on behalf of respondents nos. 2 and 3 pasted on one side of that hut and that he filed an objection in this connection before the Presiding officer with a copy to the Returning officer. R.W. 2, the Presiding officer of Baijnathpur polling station, says that he did not find any poster pasted anywhere within the polling enclosure excepting one which was pasted on the wall of a hut and that that poster was torn and undecipherable. There is no evidence to show who pasted that poster and when. We accept the evidence of the Presiding officer and hold that there was only one torn and undecipherable poster which was found pasted to the hut. Under section 130 of the Act, it is an offence to exhibit any notice or sign relating to the election within hundred yards of a polling station. We do not think that anyone can be said to be guilty of this offence when there is no evidence to show who pasted the poster which the Presiding officer found and when it is not at all clear whose poster it was. No importance can thus be attached to this allegation.

(3) The third allegation is that the Presiding officers of polling stations bearing Nos. 290 and 296 announced at the time of polling that there were two kinds of votes—one meant for the reserved seat and the other for the general seat. This allegation has also been supported by the petitioner alone. He is an interested witness. The Polling chart (Ext. 53), shows that polling station No. 290 was at Birgaon and polling station No. 296 was at Babhangama. R.W. 5 says that it is false to say that the Presiding officers of Birgaon and Babhangama polling stations used to tell voters that one ballot paper was meant for the reserved seat and the other for the general seat. We consider his evidence to be reliable and we hold that this allegation has not been substantiated.

(4) The fourth and last allegation which has to be considered under this issue is that the names of candidates along with their symbols were not displayed at some polling stations e.g. Bhaddi and Suhath as required by rule 19 of the Representation of People Rules, 1951. P.Ws. 1 and 2 were the Presiding officers of the polling stations at Suhath and Bhaddi, respectively. They say that the symbol of none of the candidates was displayed at the gate of the polling booth. Rule 19 of the Representation of People Rules does not lay down that the symbol of any candidate should be displayed inside or outside a polling station. It merely provides that a notice specifying, among other things, the name of each candidate and the description of the symbol which has been assigned to each of them should be displayed prominently outside and inside each polling station. We, therefore, hold that this rule was not infringed simply because the symbols themselves were not displayed outside the polling stations at Suhath and Bhaddi.

In view of our findings on all the allegations under this issue, we hold that no material irregularity or illegality was committed in conducting the polls as alleged by the petitioner. This issue is, therefore, answered in the negative.

Issue No. 7.—Ext. 53 is the certified copy of page 274 of the Electoral Roll of Bhagalpur-cum-Purnea Parliamentary constituency, Part I. It shows that there

is a village named Bhandra No. 262 under Tribeniganj police-station and there are fourteen voters in that village. In the Polling chart (Ext. 53), we do not find any mention of village Bhandra No. 262. The marked Electoral Rolls of all the polling stations of Tribeniganj police station No. 2, have not been exhibited in this case. Hence we are not in a position to come to a definite conclusion that copies of the Electoral Roll supplied to the Presiding officers did not contain the names of the voters of village Bhandra, but the likelihood is that as the name of this village is not in the Polling chart (Ext. 53), the voters of that village had no polling station where they could cast their votes. At the hearing, the petitioner has not alleged that the voters of any other village were deprived of their right of franchise. Even if the voters of village Bhandra could not poll their votes they were only fourteen in number. We are, therefore, of the opinion that the result of the election has not been materially affected on account of the alleged inability of those voters to poll their votes. We answer this issue accordingly.

*Issues Nos. 6, 8, 9 and 10.*—We have taken up these four issues together for the sake of convenience.

The Returning officer (R.W. 1), has himself stated as follows:—

"I had some difficulty in the counting of votes of this constituency. Firstly, the votes of the ballot boxes could not be counted serially as the serial numbers of some of the boxes could not be located at all. After satisfying myself from the symbols of the candidates and the seals, boxes belonging to the same candidate were used in the vacant spaces as a result of which some transpositions took place. Secondly, it was pointed out to me after the counting of votes of candidate No. 3 (Keral Mushar), was over by the counting agent of candidate No. 1 that I should not have commenced the counting of votes of candidate No. 4 until the counting of votes of candidate No. 3 was completely finished."

The Returning officer has also stated that the serial numbers of about 30 ballot boxes could not be located but some of those serial numbers were subsequently discovered after the window covers had been opened. Sub-rules (3) and (4) of Rule 21 of the Representation of People Rules lay down the method of fixing the paper seals in ballot boxes and they provide that the Presiding Officer as well as each candidate or his election or polling agent who may be present should fix their signatures or seals on the paper seals. Ext. A is a copy of the executive instructions which were issued to the Presiding Officers. In paragraph 12 at page 5 of this exhibit, Presiding officers have been instructed about the method in which they should put identity marks on the paper seals before they are fixed in the ballot boxes. Had this instruction been carried out, there could be no difficulty in locating the serial numbers of the ballot boxes, at any rate, after the window covers had been opened. Hence it is clear that some of the Presiding officers of this constituency did not follow this salutary instruction.

Under rule 33 of the Representation of People Rules, the Presiding officers had to send accounts of ballot papers in Form 10 to the Returning officer along with unused ballot papers etc. Ext. 7 (a) is an order passed by the Returning Officer dated 4th March, 1952, on an application for copy and it shows that Form 10 was not received at all from polling stations Nos. 178, 292, 293 and 583. The Presiding officers of these polling stations clearly infringed rule 33 because the counting of votes of this constituency was concluded on 10th February, 1952, and these forms were not received even before 4th March, 1952. In paragraph 5 of Appendix B at page 50 of Ext. A, the Presiding officers have been instructed to keep strictly accurate account of paper seals and to return all unused paper seals along with the account to the Returning officer. The Returning officer (R.W. 1), has stated that no account of paper seals of any polling station was received in his office. Thus this instruction was not complied with by the Presiding officers of this constituency.

The Returning officer has said that the ballot boxes of one candidate were kept separate from those of another candidate when they were received in his ijlal room and in his chamber. As it is the admitted position, however, that the ballot boxes of the petitioner were originally found to be short by one and there was one extra box which was found among the boxes of respondent No. 2, it seems to us that some mistakes were undoubtedly committed in keeping the ballot boxes of one candidate separate from those of others. The petitioner's box which was originally considered to be missing was his box No. 161. The Returning officer says that the extra box of respondent No. 2, on being opened, was found

to be his box No. 219. It appears from the Returning Officer's order sheet dated 29th February, 1952, (Ext. 41), that two boxes issued from polling station No. 330 were counted in favour of respondent No. 2 as his boxes Nos. 330 and 338. The paper seals gave no clue and no discrepancy in symbol was brought to the Returning Officer's notice. Hence the extra box No. 219, was assigned serial No. 338 of the same candidate and the figures in serial No. 338 were transferred to serial No. 330. Thus the figures originally recorded as belonging to box No. 330 of respondent No. 2 became extra and these figures were transferred to the petitioner as it was found on check that it was not really his box No. 181 but his box No. 330 which was missing. These transpositions show a great deal of uncertainty about the identity and serial numbers of the ballot boxes. We may mention that Ext. 41 shows that transpositions took place in the cases of at least 21 ballot boxes of all the candidates taken together.

The symbol of the Congress candidate was a pair of bulls. The symbol of the petitioner, who was a scheduled caste, Congress candidate, was an encircled pair of bulls. When box No. 623 of Anuplal Mehta, respondent No. 2, was being counted, it was discovered that the symbols both inside and outside the ballot box, showed encircled pairs of bulls. The Returning Officer says that when he pointed out that the seal showed that it belonged to Anuplal Mehta and the numbering in Purnea district also showed that it belonged to the same candidate, the petitioner allowed it to be counted in favour of Anuplal Mehta. It is true that the petitioner allowed the ballot papers in that box to be counted in favour of Anuplal Mehta but the fact remains that the symbols inside and outside the box were of one candidate whereas the numbering and the seal showed that the box belonged to another candidate. It is difficult for us to be sure that the box really belonged to Anuplal Mehta and not to the petitioner. It is possible that the Presiding officer concerned made a mistake in making the endorsement of identification number on the seal and the symbols were right. If that is so, the position that would arise would be that votes polled in favour of the petitioner were counted in favour of Anuplal Mehta.

The facts which we have mentioned above make it perfectly clear that the Returning Officer had a great deal of difficulty in counting the votes polled by the different candidates. He has said in his evidence that he was satisfied about the correctness of the counting before he announced the result on 10th February, 1952, and we have no doubt in our minds that he did his best to see that votes polled by each candidate were accurately counted. Our difficulty, however, is that there are several facts which go to show that the counting of the votes of each candidate has not, after all, been accurate. Some instances are as follows:—

- (1) Form 15 of Kirai Mushar, respondent No. 2, is Ext. 50. It shows that his box No. 396 was counted at counting table No. 4 and again at counting table No. 9. They are mentioned at pages 129 and 176, respectively. His box No. 479 appears from pages 148 and 89, respectively of Form 15 (Ext. 50), to have been counted at table Nos. 8 and 19. His box No. 545 appears from pages 181 and 132, respectively of Ext. 50, to have been counted at table Nos. 9 and 4. One ballot box could not be counted at two counting tables. It is clear, therefore, that either the counting parties made mistakes in recording the ballot box numbers or, for want of serial numbers, they located the different ballot boxes as bearing the same serial number.
- (2) Form No. 10 [Ext. 46 (Z-15)], of polling station No. 349 shows that the total number of ballot papers issued to voters in that polling station was 768. Exts. 47(a), 47(c), 47 and 47(b) are Forms 14 of the petitioner, respondent No. 1, respondent No. 2 and respondent No. 3, respectively. The total number of valid votes counted in favour of all the four candidates as being polled in polling station No. 349 appear from these exhibits to be 911. This shows that 143 ballot papers in excess of the ballot papers issued in that polling station to voters were found in the ballot boxes of all the four candidates. Ext. 46(Z-25), is Form No. 10 of polling station No. 479. There are mistakes in this form but, making allowance for the mistakes, it appears that 534 ballot papers were issued to voters in this polling station. From Exts. 47 series, it appears that the total number of valid votes counted in favour of all the four candidates as being polled in this polling station comes to 573. Thus 39 ballot papers were found to be in excess of the number issued to voters. Ext. 46(Z-30), Form No. 10 of polling station No. 552, shows that 838 ballot papers were issued to voters in that polling station. Exts. 47 series

show that the total number of valid votes counted in favour of all the four candidates as being polled in that polling station was 871 i.e. 33 ballot papers in excess of the number which should have been found. By similar comparison, it appears that 105, 118, 231 and 179 ballot papers were found to be short in the ballot boxes of all the four candidates taken together as compared with the ballot papers issued to voters in polling stations Nos. 166, 200, 219 and 282, respectively. These facts can lead to only one of two conclusions i.e. either the ballot boxes were tampered with or the boxes of one polling station were counted in place of the boxes of another polling station in all these cases.

- (3) In Form 15, the serial number of the ballot box from which are recovered the ballot papers which are rejected, are to be recorded. At pages 1 to 13 of Form 15 (Ext. 50), of respondent No. 2, no serial number of any box has been mentioned. This shows that serial numbers were not found or the counting parties were careless.

The actual result of the election has to be set down in Form 16 which, in this case, is Ext. 48. The numbers of votes mentioned in this form as having been polled by different candidates are nothing but the totals of votes shown in form 14 to have been polled by them. Form 14 of all the candidates are, as we have already mentioned, Exts. 47 series. None of them bears the signature of the Returning Officer. In view of the fact that the figures given in them appear clearly to be wrong on several particulars as pointed out in the preceding paragraphs, we find it difficult to rely upon the figures given in them.

We may also mention that Forms 15 of none of the candidates except the petitioner bear the Returning Officer's signature.

In the circumstances mentioned above, we have come to the conclusion that there has been a great deal of confusion in the counting of votes in this case with the result that the result of the counting of votes cannot be held to be correct. We feel that none of the candidates, successful or unsuccessful, can be held to have actually polled the number of votes shown against his name in Form 16 on account of the inaccuracy of counting. We are unable to form any idea as to what the result of the election would have been if the votes polled by different candidates could have been accurately counted. The result of the election must, therefore, be held to have been materially affected.

We answer all the four issues accordingly.

*Issue No. 11.*—In view of our findings, it is impossible to say that the petitioner actually polled the highest number of votes. Hence he is not entitled to be declared to have been duly elected.

We answer this issue in the negative.

*Issue No. 12.*—The petitioner is entitled to the relief that the election of both the returned candidates be declared to be void under sub-section (2) (c) of section 100 of the Act. It is, therefore.

#### ORDERED

that the election of both the returned candidates, Respondents Nos. 1 and 2, declared to be void. As respondents Nos. 1 and 2 do not appear to be at fault, the parties will bear their own costs.

BHAGALPUR;

The 14th March, 1953.

(Sd.) K. SAHAI, Chairman.

(Sd.) RAJESHWARI PRASAD, Member.

(Sd.) U. K. P. SINHA, Member.

[No. 19/142/52-Elec.III.]

P. R. KRISHNAMURTHY, Asstt. Secy.